THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.10902 OF 2015

ORDER: (Per Hon'ble Sri Justice R. Subhash Reddy)

This Writ Petition is filed questioning the assessment order, dated 09.03.2015, passed in G.C.No.51/2013-14 and the consequential penalty show-cause notice, dated 16.03.2015, issued in G.C.No.51/2013-14 by respondent No.2 - Deputy Commercial Tax Officer – II, Tirupathi – I Circle, Tirupathi.

Petitioner is a registered dealer under the provisions of Central Sales Tax Act, 1956 in the State of Tamil Nadu. He has purchased 'human hair' in the auction conducted by Tirumala Tirupati Devasthanam and when the same was in transit, respondent No.2 has seized it on the ground that it was not supported by necessary documents. Earlier, when similar situation has arisen, he approached this Court by filing W.P.No.26345 of 2013 and the same was disposed of along with W.P.Nos.26374 and 21929 of 2013, by order, dated 09.06.2014. Thereafter, review applications were filed and pursuant to the directions issued by this Court on 27.01.2015 in Review W.P.MP.(Sr).Nos.140314 and 140313 of 2014 in W.P.Nos.21929 and 26374 of 2013 and C.C.No.1601 of 2014, respondent No.2 has passed the impugned order, dated 09.03.2015, fixing tax liability on the petitioner at Rs.24,639/-, which was already paid. Consequently, show-cause notice, dated 16.03.2015, was issued proposing to levy penalty of Rs.21,64,262/-.

Sri M.V.J.K. Kumar, learned counsel for the petitioner, submitted that as much as the petitioner is an auction purchaser, absolutely there is no basis for imposing tax on him. It is further submitted that the commodity is purchased only for the purpose of export, but not for selling within India and as such, it is not covered by the provisions of Andhra Pradesh Value Added Tax Act, 2005, so as to impose tax. It is further submitted that as there is a typographical mistake in the show-cause, dated 16.03.2015, errata, dated 17.04.2015, was issued proposing to levy penalty of Rs.49,278/-, a copy of which is placed on record. It is further submitted that during pendency of the Writ Petition, petitioner has filed an appeal against the order, dated 09.03.2015, and the same is pending consideration.

In view of the pendency of appeal before the appellate authority, we are of the view that there is no reason for entertaining the Writ Petition at this stage, as all the pleas put forth by the petitioner can be raised in the appeal.

Inasmuch as the commodity, which the petitioner claims to have purchased, is sold in auction by the agency of TTD and in view of the pendency of appeal before the appellate authority, we deem it appropriate to dispose of the Writ Petition with a direction to respondent Nos.1 to 3 not to proceed further pursuant to the show-cause notice, dated 16.03.2015, and errata, dated 17.04.2015, till the disposal of appeal filed by the petitioner against the order, dated 09.03.2015. It is made clear that subject to the outcome of appeal, it is open to respondent Nos.1 to 3 to proceed further for collection of penalty as per Rules. It is needless to observe that the appellate authority shall dispose of the appeal as expeditiously as possible.

Subject to the above, the Writ Petition is disposed of. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

April 20, 2015
MD